File No. 1237
19 34

Collection No.

Pros. / Serial Nos. 1 - 2

Subject.

Assessment to Income tax on any portion of shareholders dividends on profits & gains from investments outside British India.

Previous References.

Indexed

Later References.

'A'

3/8/45

Yes; but see if the subject given above has been correctly expressed; if not, pl. revise.

19/8

D.O. U.O.o. 701-L. /54 Cong. to Delhi the 11 N.L.

New Delhi, the 3rd December '54.

My dear Thor,

[illegible]

Your D.O. No.F.1.2.50/54-Pub, dated the 26th October 1954. to Vachha.

With your letter under reply you sent me a copy of the judgment of the Bombay High Court in a reference under section 66(2) of the Indian Income-tax Act, 1922, decided by an amount in respect of the assessee who in lieu of a certain sum which bore to the total amount of the dividends received by her from a certain company she was given debentures of the same company. The point that the assessee had formed the contention is briefly, the assessee's under section 14(3)(a) the amount of the assessee's dividends was totally exempt in all circumstances even though it may be in part repayment of capital and is received periodically and annually. Now as the company had not in fact been in the course of winding up the amount could not be said to have formed any part of the distributable dividends to the shareholders. The first question is that which has been argued in the case of the Investment Trust, where the High Court of Calcutta have given judgment against us and where we are appealing to the Privy Council; but in that case the second contention above-mentioned could not have been raised, since the case proceeded to trial on the basis of a finding of fact by the Commissioner to the effect that the whole of that portion of the

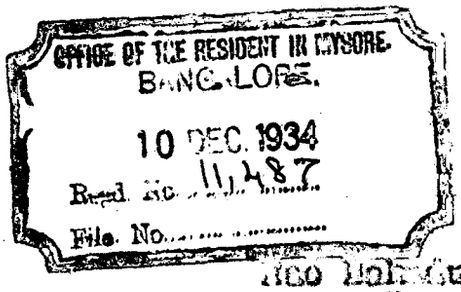
dividends which was sought to be taxed in the hands of the shareholder had been paid out of profits that had escaped taxation in the hands of the company. Obviously if this was a fact the dividends could not have been distributed in British India unless the money had been brought, directly or indirectly, into British India.

2. The Government of India have now decided, while proceeding with the appeal in the Hungerford case on the above basis, that it is undesirable to attempt to tax shareholders on any proportion of their dividends if it can be shown as a fact that the portion of the profits and gains which has escaped taxation has not been brought (either directly or constructively) into this country, so that it could not have entered into the dividend distribution.

3. In the case to which the above correspondence relates that proportion of the total income of the company which was derived from investments outside British India was small and it may well be that it was not in fact brought into British India and did not by any means, direct or indirect, become available for distribution as part of the dividends. If on going into the facts you find that this was the case, you should dispose of the matter in favour of the assessee under section 66. If not, we shall have to put in the reference, though I understand the assessee will probably not wish it to be taken to trial until the Privy Council have decided the Hungerford Investment Trust case. I need hardly add that in following these instructions the Income-tax authorities will be most difficult to convince that "the portion of the profits and gains which has escaped taxation has not been brought (either directly or constructively) into the country, so that it would not have entered into the dividend distribution" if the total of the dividends

in more than the amount of the profits which have been brought to tax in the hands of the company, unless this excess of the dividends over the taxed profits can be found to have been provided for out of some such fund as a dividend equalisation reserve.

4. I shall be grateful if you could also look once more into the case which was discussed in the correspondence ending with your demi-official letter No. I.Ts.4(3)/33, dated the 28th September 1933, and let me know now whether in the light of the instructions contained in this letter you consider that that was a case in which no assessment should have been made upon the shareholder.



Yours sincerely,

Sd. A.E. Lloyd,
S. 12. 34.

The Hon'ble Mr. Lochhead, C.I.E., I.C.S.,
Commissioner of Income-tax, Central
and United Provinces.

Copy forwarded to all other Commissioners of Income-tax for information and guidance.

By order, etc.,

Second Secretary,
Central Board of Revenue.

C.B.D.

THE OFFICE OF THE HON'BLE THE RESIDENT IN MYSORE,

Bangalore, the 5/11 1935.

No. D 1140 87/34

A copy of the undermentioned paper(s) is forwarded to the Assistant Commr. of Income-tax, C.& M. Station, Bangalore, for information and guidance.

for information, in continuation of / with reference to the correspondence ending with (his) Memorandum / letter / endorsement from

~~No.~~ ~~dated the~~

By order, etc.,

For Secretary / ~~Asst Secy~~. to the Resident in Mysore & Commr. of Income-tax

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List of papers.

S.N.1 D.O. Letter from the ~~Secretary,~~ Central Board of Revenue, C.No. 791-I.T./
I.J.C. 34, dated the 3rd December 1934.

18-12-34